

**MINUTES OF HARRISONBURG PLANNING COMMISSION**  
**December 10, 2008**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, December 10, 2008, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Jared Burden, Alan Finks, Bill Jones, George Pace, J.M. Snell, and David Wiens.

Members absent: None

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, Senior Planner; Alison Banks, Planner and Secretary.

Chairman Baugh called the meeting to order and determined a quorum with all seven members in attendance. He then asked for review and approval of the minutes from the November 12, 2008 regular Planning Commission meeting and the November 12, 2008 Capital Improvement Program meeting.

Mr. Snell moved to approve the minutes from the November 12, 2008 regular meeting as presented.

Mr. Jones seconded the motion.

All voted in favor of approving the minutes. (7-0)

Mr. Snell moved to approve the minutes from the November 12, 2008 Capital Improvement Program meeting.

Mr. Jones seconded the motion.

All voted in favor of approving the minutes. (7-0)

**New Business**

***Special Use Permit – 1320 Port Republic Road (10-3-91 (8) Reduced Parking)***

Chairman Baugh read the request and asked staff to comment.

Mr. Fletcher said the Comprehensive Plan designates this area as Low-Density Residential. This designation states that these areas consist of single-family detached dwellings with a maximum density of 1 to 4 units per acre. Low-density sections are found mainly in well-established neighborhoods and are designed to maintain the existing character of neighborhoods and to provide traditional areas for home ownership.

The following land uses are located on and adjacent to the property:

Site: Former child day care facility (with special use permit), zoned R-1

North: Single family home, zoned R-1

East: Non-conforming mobile home park, zoned R-1

South: A private driveway to access the mobile home park, zoned R-1 and Comsonics, zoned M-1

West: Across Port Republic Road, single family homes, zoned R-1

In light of last night's City Council approval to rezone the applicant's property, located at 1320 Port Republic Road, to B-2C, the applicant is requesting a special use permit per Section 10-3-91 (8) of the Zoning Ordinance. This special use allows the property owner to provide fewer than the required number of parking spaces within the B-2, General Business District. A requirement of this permit compels the property owner to provide open space equal to the amount of space that would have been used for the required number of parking spaces in the event that more parking spaces are needed in the future. If the permit is approved, the applicant must note the obligations of the permit in the deed to the property. The applicant intends to lease the property to the owner of VIP Scooters; they are currently located in the City off of Miller Circle.

The property is located between the Neff Avenue/Peach Grove Avenue intersection and the eastern city limits of Port Republic Road, which is also the section of the road that is currently under construction for the third phase of the Port Republic Road street improvements. The improvements include the construction of four travel lanes, a center turning lane, and pedestrian and bicycle facilities. There was no right-of-way needed from this property because the majority of the improvements are occurring on the opposite side of the street.

Staff recommended against the rezoning request to convert the property from a residentially zoned parcel to a commercially zoned lot, contending that the most beneficial and undamaging use to the area would be either residential or professional office. Staff also feared that if the rezoning was approved, the characteristics of Port Republic Road would be changed indefinitely. With that in mind, however, staff is generally in favor of this special use permit request. More open space and green areas should help maintain a less commercialized appearance and it not only should promote good stewardship of the land but also encourage less intensive uses for this section of Port Republic Road.

The applicant's representative has been working with the City Attorney to amend their rezoning proffers before it is heard at City Council on December 9<sup>th</sup>. Staff has seen a draft of what they intend to proffer, which would limit the property's uses to mercantile establishments and accessory uses while also limiting business hours until 10:00 p.m.; no drive-thru facilities, shopping centers, or restaurants would be permitted. Although these proffers are more restrictive than those reviewed at Planning Commission, staff continues to believe this property would be appealing for more intense uses that would generate more traffic and require more parking spaces than the anticipated VIP Scooter business, which is expected to generate very little traffic and/or few customers. For this reason, staff does not want to recommend approving this special use permit without conditions that could help control parking nuisances. Therefore, staff recommends the special use permit be applicable only for the business of VIP Scooters on this property. Furthermore, because of issues that were discussed during the rezoning request related to tractor trailer deliveries to this property, staff also recommends the condition that before the special use permit is granted, the applicant prove to the City that a tractor trailer can maneuver on site without utilizing the Port Republic Road right-of-way. If this is desired by Planning Commission, the applicant can provide this information to staff before the case is reviewed by City Council in January.

Staff recommends in favor of the special use permit with the above discussed conditions.

Chairman Baugh asked if there were any questions for staff.

Mr. Pace recused himself from the public hearing because of a conflict of interest and before leaving the Council Chambers he offered the suggestion that if the 18 wheel truck could arrive at certain times of the day, it would alleviate the whole issue of turning into and out from the site.

Hearing no further questions or comments, Chairman Baugh opened the public hearing and invited the applicant or the applicant's representative to speak.

Mr. Steve Blatt, attorney for Mrs. Ellen DeSarno, the applicant, said the issue of the special use permit for this project was brought up by staff and we immediately applied for it. By my calculations we are only five spaces short, but the question for Mrs. DeSarno is does she go on ahead and pave for the new parking. She does not want to do that unless she has to. I have spoken with staff before Thanksgiving and everything seemed to be okay, and then last week I got the phone call regarding an engineering study for the truck turning around; we are looking into that. Tractor trailers came into this site when it was University Market. I do have concerns that I do not think it is permissible to confine this permit to one business, I do not think that there is authority to do that. Perhaps we can reach that with different wording if we have to go that route. I also believe that Mr. Pace's suggestion should be taken into account. We do not necessarily agree with all the conditions but we do ask for a favorable recommendation.

Chairman Baugh asked if there were any questions for the applicant's representative. Hearing none, he asked if there was anyone else with the applicant wishing to speak. Hearing none, he asked if there was anyone wishing to speak generally in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing.

Mr. Jones said the measurement on the survey shows frontage of 170 feet, is that correct?

Mr. Fletcher replied yes.

Mr. Jones said the average tractor trailer length is somewhere between 70 and 75 feet, which would leave right at 100 feet to work with. I do not see any problem with accessing it with commercial vehicles. As Mr. Blatt has alluded, they have done so in the past; however they were shorter vehicles back then. What we heard from the business owner is that tractor trailers will be there infrequently; along with the fact that his customer base does not generate much traffic, I do not see a problem.

Mr. Snell said he raised the concerns last month about truck delivery and he still has some reservations about it. I think Mr. Jones is accurate, 170 feet is enough that a west bound truck could pull-off the road, off-load, and get back on the road without much trouble. If they try to come in east bound, they would have a difficult time getting back out onto the road. I do not know that we need to regulate how these deliveries occur; truck drivers talk amongst themselves and they will know what works best. Mr. Blatt said he did not think that a special use permit could be applied to a single business; however, to me, if we are going to reduce the number of required parking spaces it must be appropriate for that business. It seems perfectly appropriate to apply it to the business, a special use permit for that small volume business.

Mr. Finks asked if the special Use Permit could be tailored to this business. What else could go into that establishment at this point?

Mr. Fletcher said other mercantile establishments such as another convenience store, a hardware store, tattoo parlors, etc. could locate at this property.

Mr. Burden said it is my thought that we cannot get too attached to the idea of this being only VIP Scooters, we have a strong sense that is what is going to be there, but we do not know for certain.

Mrs. Turner said if you tie the special use permit to a particular use, and that use falls through, then the next use that goes in would have to meet the current parking standards or apply for their own special use permit, under the premise that their traffic generations are somewhat different even though they are all mercantile uses.

Mr. Jones made a motion to approve the special use permit with the condition that before the special use permit be granted the applicant prove to the City that a tractor trailer can maneuver on site without utilizing the Port Republic Road right-of-way.

Mr. Snell said when we do special use permits it is always about a particular occupant and a particular desire. When the use changes the special use usually expires. Does a special use permit go with the property or the business/owner?

Mr. Fletcher said it is for the property.

Mr. Snell said if VIP Scooters leaves the property and a convenience store comes in, they definitely would not qualify for reduced parking.

Mr. Fletcher said if there were no limitations placed on the special use permit and VIP Scooters were to leave the property, then a convenience store could come in and not have to put in the required parking.

Chairman Baugh said this motion has failed for lack of a second. Is there another motion?

Mr. Wiens said he moved to approve the request with the two conditions set forth by staff.

Mr. Burden seconded the motion.

Chairman Baugh asked if there was any further discussion. Hearing none, he called for a roll call vote on the motion.

Commissioner Finks – yes.

Commissioner Wiens – yes.

Commissioner Burden – yes.

Commissioner Snell – no.

Commissioner Jones – no.

Chairman Baugh – yes.

Chairman Baugh said the motion passes (4-2) with the two conditions as recommended by staff and will go forward to City Council on January 13, 2009 with a favorable recommendation.

Commissioner Pace returned to the Council Chambers at this time.

### ***Rezoning – 584 East Market Street***

Chairman Baugh read the request and asked staff to comment.

Mrs. Banks said the Comprehensive Plan designates this area as Professional. These areas are designated for professional service oriented uses with consideration to the character of the area. These uses are found in the residential areas along major thoroughfares and adjacent to the Central Business District.

The following land uses are located on and adjacent to the property:

Site: Single-family dwelling, zoned R-2

North: Across Elizabeth Street, single-family homes, zoned R-2

East: Professional office, zoned R-3C

South: Across East Market Street, professional office, zoned R-3C and dwellings, zoned R-2

West: Professional offices, zoned R-3C

The applicant is requesting to rezone a 6,761 +/- square foot parcel from R-2, Residential District to R-3C, Multiple Dwelling Residential District Conditional. The parcel is located on the northern side of East Market Street; east of the intersection with Hill Street. Currently situated on the site is a single-family dwelling with parking and an accessory building in the rear. If approved, the applicant desires to continue using the building as a dwelling or to convert the building to a medical or professional office use.

As traffic increases along East Market Street, the homes in the area have become less desirable for single-family dwellings and more attractive as professional offices. In the last several years, a number of properties along this portion of the East Market Street corridor have been rezoned to R-3C to allow for the dwellings to be converted to medical or professional offices. Staff supported these rezoning applications because of their consistency with the Comprehensive Plan's Professional designation for this area.

Under the present R-2 zoning classification, a dwelling could be occupied by a family or not more than two (2) unrelated persons; within the R-3 zoning classification a dwelling could be occupied by a family or not more than four (4) unrelated persons. However, with this request the applicant has proffered to limit the occupancy to a family or no more than three (3) unrelated persons. As noted above, staff supported all of the previous rezonings to R-3C because those applicants proffered to only allow medical and professional offices and /or to limit residential dwellings to a family or two unrelated individuals. This allowed for flexibility in the use of the property as professional offices without the increased occupancy of the R-3 classification; a trend that staff supports for this highly traveled corridor.

If the property is rezoned and converted to professional offices, parking requirements would need to be met per Section 10-3-25 of the Zoning Ordinance. The 1,456 square foot office building would be required to have five parking spaces on site. Currently, this property has nine off-street parking spaces provided in the paved, rear parking lot, which is part of a shared parking arrangement with the two adjoining properties to the west, also owned by the applicant. Prior to issuing any change of use permit for the building, staff would need to verify that all shared parking is met for the three properties.

This is a very visible and highly traveled corridor of the City and although staff is in favor of the conversion of single-family dwellings to professional offices along this portion of East Market Street, we do not support the increase in occupancy to more than two (2) unrelated persons for this area. This corridor is a major entrance into the downtown area of the City and the existing single-family homes in this area are residential uses that are low density in nature. Allowing for greater occupancy would not be in keeping with the surrounding neighborhood and staff feels the occupancy limitation helps to maintain the attractive downtown area entrance. Staff also believes

the occupancy precedent has been set with earlier rezonings in the area. For these reasons staff does not recommend in favor of this request.

Chairman Baugh asked if there were any questions for staff. Hearing none, he asked if the applicant proffered that only two unrelated parties could reside at the site, would staff be in favor of the request.

Mrs. Banks replied yes, as we have with earlier cases.

Chairman Baugh asked if there were any other questions for staff. Hearing none, he opened the public hearing and asked the applicant or applicant's representative to speak.

Mr. Dick Blackwell with Blackwell Engineering said he is the applicant for this request. Let me explain why we are asking for what we are asking. The previous two buildings at 566 and 578 East Market Street, when we asked for those to be rezoned to R-3 Conditional, were for professional office use only. The building at 584 East Market Street has been a number of things since we have been in the area; in previous years quite a number of students have lived there at one time. The point being, the house and property were not being used very well. We were able to purchase the property and we put a lot of money into it fixing it up; it is quite nice now. We do have a fair amount of capital in this property and the truth is we needed the additional parking spaces for our other offices.

One of the reasons I am asking for three unrelated persons is because, at the moment, office space is plentiful within the City and we do not personally need it for office space. We need to rent it in order to pay our mortgage payments. It has three bedrooms, which is why the request is for three. We are there all the time, except for Sunday or Saturday and we often come in then too. We have a very tight lease that we are going to use and we feel we can police it. This is not a place where a family would want to live; you do not want children there. Income from rent with three persons would be greater than rent with two persons. At the moment it is rented to a single professional, but it is uncommon to have one person who is willing to rent a house. We could rent it to larger numbers of related individuals, which is fine under the City policy allowing a family to rent; even when it is not a customary family.

From this property to the west at Ott Street and Myrtle Street, there are 32 buildings, 12 of which are either office or commercial. Six of them are zoned R-3 conditional and six are just zoned R-3. In addition to this, there are 13 apartment buildings; six are in the R-2 zoning classification and seven are in the R-3 district. Most of the apartment buildings have from two to six apartment units in the building. A number of those have quite a few persons in each unit of the building; I do not know whether they are related or not. In addition, there are four houses that are rented to multiple tenants and two others that are single-family occupied. There is also a bed and breakfast within this section of East Market. The point is there are 20 buildings that are used for residential and all but two have more than two persons residing in the units; they may all be related. It is happening up and down the street. We felt, rather than run the risk of being like others, we wanted to ask permission openly, to be able to use it the way we would like to use it.

The taxes on the property have increased on this property since we bought it, over 180%. It is more difficult to rent as office space because of the amount of space in the community at the moment. It is difficult to buy a run-down place, fix it up, and then not be able to get your money back out of it. I think three people living in a house along this street is not unreasonable and perhaps in the economic times we are in it is for the best.

Chairman Baugh asked if there were any questions for Mr. Blackwell.

Mr. Burden asked if they owned 590 East Market Street.

Mr. Blackwell replied no, it is a counseling center owned by others. We do share the driveway with them; but we have our own parking and they have theirs. We actually paved Elizabeth Street in this area; it was gravel prior to that. Many of the homes to the west beyond us now use Elizabeth Street.

Chairman Baugh asked if there were any further questions for Mr. Blackwell. Hearing none, he asked if there was anyone else with the applicant wishing to speak. Hearing none, he asked if there was anyone wishing to speak in favor of the proposed rezoning. Hearing none, he asked if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for comments.

Mr. Finks said the single-family, neighborhood homes that staff is concerned about, do they front on Elizabeth Street.

Mrs. Banks said they are across Elizabeth Street and front along Wolfe Street.

Mr. Finks asked if these are the ones you have concerns about.

Mr. Fletcher responded the remaining homes on East Market Street and this neighborhood behind the site.

Chairman Baugh said these are the type of rezonings in the Comprehensive Plan that we are trying to encourage with the underlying idea that as residential they would have the limitation of two unrelated persons.

Mr. Snell said in this case the applicant is not going for four unrelated persons, like student occupation. He is asking for three and has openly and honestly told us why he needs three. This is sandwiched between two professional/residential properties and I think it has a bearing on this as well. The R-2 district has a limitation of two unrelated, which seems almost impossible to enforce from Mr. Blackwell's comments regarding the immediate neighborhood. Quite honestly we do not have the staff for zoning enforcement. I do not have a problem limiting this down from four and asking for three. It is a step in the right direction and I feel the applicant's argument was viable.

Mr. Burden said staff has mentioned the cases that have been approved to R-3C; were there others that tried to do a non-business and were denied.

Mrs. Turner said just to rezone to R-3 in order to get more occupants, I do not recall any cases.

Mr. Fletcher said there have been no special use permit requests for greater occupancy.

Mrs. Banks said keep in mind that going west from Sterling/Reservoir Street it is already zoned R-3.

Chairman Baugh said there was one request near the corner of Reservoir Street where the owner tried to get a straight R-3 zoning and we voted it down.

Mr. Fletcher said you are correct; the applicant later withdrew the request.

Mrs. Turner said most of the time when people come in for this type of rezoning we basically encourage them that if they want the business zoning, they should put some type of restrictions on the occupancy and that we probably would not be recommending for something that appeared they were doing the rezoning for the sake of increasing occupancy. The conversion to professional

office is looked upon favorably, but the increase in occupancy would not be something desirable here.

Mr. Pace said I do not think there is any question that the applicant is going to do what he said he would do because of what exists in the area now. It is in the applicant's best interest to find the highest quality use of that property that he can otherwise he has a different type issue. Our issue here is do we feel this is going to set a precedent that is going to move further up the street or get more people coming in looking for the same thing. Do we feel comfortable with this, because we may have an applicant come in that does not have the track record of the existing applicant. We might have to say no to one applicant and yes to another, how do we feel about that. I think that is the issue. I think there are a lot of people living in this area that are outside of code and we cannot control it. This request would stay within code if we grant this and I make a motion to approve this request.

Mr. Jones seconded the motion.

Chairman Baugh asked for other discussion or comments. Hearing none, he said he would be going the other direction with this. I think the points are well taken; however there is an additional one which is that we do not know who will end up with this property. This applicant, with this use, probably does not need much oversight; but this use goes with the property. I understand the argument about enforcement, and I understand that enforcement is an issue throughout town; but I do not quite buy the argument that because we have problems with enforcement we should grant this.

Mr. Burden said I believe the City has expressed within the Comprehensive Plan and in all meetings, as a preference, if there are changes to be made in this area, they be made in the direction of professional land use. However, I would not be comfortable to the extent of saying this application should not be granted and I intend to support the motion.

Mr. Pace said based upon what I heard this evening, some years ago this property was more or less an adult entertainment center of sorts. This applicant has come in purchased the property and made a capital investment to improve the property. Furthermore, the hopes we have of having that eastern entrance to the City, that corridor being something we are proud of. In this case the investment has been made, it is not -- approve this before I make the investment; the track record is in place.

Mr. Finks said the only thing that holds me back here is what about the next person that comes in wanting to do something like this. But I also feel as if we may be punishing this applicant for being honest about what they want to do.

Chairman Baugh said yes, they bought the property, made the investment, and what they have in there now is probably what we would want to see. The chance of a family going in there seems rather slim; so we are really talking about how many renters do you get. I am content with the notion that one or two renters, in that area of professional offices, is a good place to draw the line. He then asked if there was any further discussion. Hearing none, he called for a roll call vote on the request.

Commissioner Finks – no.

Commissioner Wiens – no.

Commissioner Burden – yes.



Vice Mayor Pace – yes.

Commissioner Snell – yes.

Commissioner Jones – yes.

Chairman Baugh – no.

Chairman Baugh said the motion to approve the rezoning request passes (4-3) and will move forward to City Council on January 13, 2009 with a favorable recommendation.

***Rezoning – 715 Port Republic Road***

Chairman Baugh read the request and asked staff to comment.

Mrs. Banks said the Comprehensive Plan designates this area as High-Density Residential. This designation states that these areas are intended for high-density development, mostly apartment buildings with densities ranging from 12 to 15 dwelling units per acre.

The following land uses are located on and adjacent to the property:

Site: Office building, zoned R-3

North: Across Port Republic Road, Liberty Gas Station and Dave's Taverna, zoned B-2

East: Across Hunters Road, Hunters Ridge Condominiums, zoned R-3

South: JMU Residence Hall, zoned B-2

West: Exxon Gas Station and Convenience Store, Zoned B-2

The applicant is requesting to rezone one, .63-acre parcel from R-3, Multiple Dwelling Residential District to B-2C, General Business District Conditional with the goal of establishing commercial and office uses on the site. The property is situated on the northwest corner of the intersection of Port Republic Road and Hunters Road. Currently located on the site is a two story building which houses the offices of Funkhouser & Associates Properties, LLC; a use permitted by right in the R-3 zoning classification. If rezoned, the applicant intends demolish the existing structure and construct a new, two story building, with an outdoor area, which could be occupied by a mix of commercial and office uses.

With this application, the property owner has submitted a Conceptual Site Plan dated October 31, 2008, which is proffered in the general format and location shown. The applicant also proffers:

- the commercial space shall not exceed 4,400 square feet and office space shall not exceed 3,000 square feet, while meeting the required number of off-street parking requirements,
- only the following permitted B-2 uses as allowed under Section 10-3-90:
  1. Mercantile establishments which promote the show, sale and rental of goods, personal service establishments, restaurants, and other shops and stores customary to shopping center and convenience outlets,
  2. Governmental, business and professional offices, and financial institutions,
  3. Accessory buildings and uses customarily incidental to any of the above listed uses,
- only the following uses permitted by special use permit under Section 10-3-91:
  1. College or university buildings which are either owned or leased by such institutions and are adjacent or contiguous to the primary campus of the college or university,
  2. Reduction in the required side yard setback to zero feet along the lot line of an adjoining lot or parcel zoned B-2 or M-1,

- ten deciduous trees, no less than 2 inches in caliper at planting, will be planted at approximately 40 feet intervals and maintained approximately as shown on the conceptual plan; a minimum of 14 shrubs or bushes will be planted and maintained at the approximate locations shown on the conceptual plans,
- the total square footage of all free standing signs will not exceed 136 square feet; sign height is limited to 25 feet; the current lot or any future lots created, will not be allowed to have an interstate overlay sign.

The applicant's engineer submitted a traffic impact requirement analysis with the rezoning application to determine whether a traffic impact analysis (TIA) would need to be submitted for the development. The study indicated that the total traffic generated during the highest peak hour (which would be on a Saturday) is projected to be 62 peak hour vehicle (PHV) trips. The City requires that a TIA be conducted for any development expected to generate 100 PHV trips. The total PHV trips for the proposed development falls below that requirement and although staff is generally concerned with traffic along Port Republic Road we determined that a TIA is not required for this rezoning request.

The site plan indicates that there would be a building situated along Port Republic Road, with off-street parking in the rear. All vehicle access into the parking would be from Hunters Road and only pedestrian access to Port Republic Road. There is also pedestrian access to Hunters Road; however there is no sidewalk along this side of the street. Staff has suggested continuing the sidewalk from the stub-out on Port Republic Road, along Hunters Road to the entrance of the development. A fence is proposed along portions of the parking area, and although not proffered, it would be required in order for the development to meet parking space separation requirements for the off street parking layout. Lastly, the site plan shows a large outdoor patio area along the front of the structure. The applicant has been made aware that if this area is to be used for any type of commercial space; it would be calculated as square footage and shall be accounted for in the parking requirements.

The applicant has proffered to limit any commercial area of the site to 4,400 square feet. Office space is limited to 3,000 square feet, which implies that the overall usable square footage of the site would be 7,400 square feet. Staff feels this size is along the same scale with the previously approved Campus Corner rezoning for an additional 10,000 square feet of commercial space and the approved 865 East special use permit to allow approximately 16,000 square feet of commercial area. This parcel is the only residentially zoned parcel that has street frontage along Port Republic Road that is within the block between Hunters Road and Interstate 81. Because of the size and shape of the parcel, staff believes there is little likelihood of this site being developed residentially. Staff supports a favorable recommendation to rezone this property from R-3 to B-2C.

Chairman Baugh asked if there were any questions for staff.

Mr. Wiens said on the proffers listed, number 2 lists financial institutions; what is a financial institution.

Mrs. Banks replied a bank or credit union.

Mr. Wiens said you could actually put a bank here.

Mrs. Banks said yes, if they meet the parking requirements.

Mr. Wiens said it just seems strange that we would see this listed in the proffers; we do not allow for a drive-thru.

Mrs. Banks replied yes, we do.

Chairman Baugh asked if there were other questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak.

Mr. Ed Blackwell of Blackwell Engineering said he is representing the owner on this request. I am here mainly to answer any questions you might have. Someone brought up a potential drive-thru; the problem here is stacking length requirements by the City and VDOT, they could not be met.

Mr. Wiens asked if you need to have stacking requirements for a bank.

Mr. Blackwell replied you have to have that for any drive-thru facility. VDOT requires 150 feet and the City is 200 feet per lane. This property would be hard pressed to meet that requirement. The square footage limit is based on parking; we can only get so much parking on this site. The owner is planning on keeping his offices of Funkhouser and Associates Properties, LLC on the second floor of the building and to put some type of dining/restaurant type establishment on the lower level. On the plan presented here we have parking calculated for such an arrangement. If you have any questions I will be happy to answer them.

Mr. Pace asked if they envisioned the terrace fronting Port Republic Road or Hunters Road.

Mr. Blackwell said there is a patio planned for the front along Port Republic Road and it will be elevated somewhat. It will have a low fence and shrubs around the patio so if you are sitting out there you can still see out towards the street.

Mr. Pace said the fence would be high enough from the perspective that it is safe, someone could not fall over it.

Mr. Blackwell replied yes, we have not done all the details yet, but our intention is to have a semi-closed patio, that you can see over.

Chairman Baugh asked if there were any further questions for Mr. Blackwell. Hearing none, he asked if there was anyone else with the applicant wishing to speak.

Mr. Barry Kelley said he is one of the owners of the property along with Joe Funkhouser and they have owned the property since the early 1990's. It is a really old house and we would like to make improvements for our use as well as for the public. Obviously making space available to rent is availing us to be able to afford the improvements. We think it would be a nice improvement for the whole corridor and we think it would be safer once we are able to cut down the ground level there at the corner of Hunters Road. We would appreciate your support on this request.

Chairman Baugh asked if there were any question for Mr. Kelley. Hearing none, he asked if there was anyone else with the applicant wishing to speak. Hearing none, he asked if there was anyone wishing to speak in favor of the proposed rezoning. Hearing none, he asked if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion.

Mr. Pace moved for a favorable recommendation consistent with the staff recommendation.

Mr. Finks seconded the motion.

Chairman Baugh asked if there was any further discussion. Hearing none, he called for a voice vote on the motion.

All voted in favor of the proposed rezoning with the proffers (7-0). Chairman Baugh said this will move forward to City Council on January 13, 2009 with a favorable recommendation.

***Rezoning – Proffer Amendment 810 Port Republic Road***

Chairman Baugh read the request and asked staff for comments.

Mr. Fletcher said the Comprehensive Plan designates this area as Medium-Density Residential. This designation states that these areas are near major thoroughfares or commercial areas. They contain a variety of housing types such as single-family, duplex, and two or three story apartments and densities can range from 1 to 15 units per acre.

The following land uses are located on and adjacent to the property:

Site: Gas station and small restaurant operations, zoned B-2C

North: Forest Hills Townhomes, zoned R-4

East: Forest Hills Manor and across Devon Lane, Ashby Crossings, zoned R-4

South: Across Port Republic Road, townhomes and multi-family units, zoned R-3 and R-3C and the development of 865 East, zoned R-5C

West: Liberty gas station, zoned B-2

After tabling their request at the October Planning Commission meeting, the applicant is again requesting to rezone the 5.89-acre parcel, located at the corner of Port Republic Road and Devon Lane, by modifying proffers that currently zone the property B-2C, General Business District Conditional. The site is currently known as Campus Corner with a total of 12,010 square feet of commercial space that includes a gas station, Dairy Queen, and Great Wraps Café. In May, the City approved a rezoning for this property to permit an additional 10,000 square feet of gross leasable area. Approval of the current request would allow 27,970 more square feet of commercial space, which would be a total of 49,980 square feet for the site.

The May rezoning, from R-4 to B-2C, allows the property to have a total of 22,010 square feet of commercial space. The property also cannot have any new entrances onto Port Republic Road; it cannot have interstate overlay signs; it is limited to a maximum of 150 square feet of freestanding advertising with sign heights limited to 25 feet; and, the property does not permit uses within Sections 10-3-90 (6), (7), and (8) (This includes the sale and repair of vehicles, recreation equipment, or trailers and also general service or repair shops). Soon after the May rezoning was approved, the applicant submitted a comprehensive site plan for construction, which is still in review.

In October, the applicant submitted a second rezoning application, requesting to modify the proffers on the property that would have allowed more than two and a half times the amount of commercial space permitted by the May rezoning, which, in other words, would have allowed five times the amount of commercial space that currently exists on the property. The applicant's proffers in October again included no new entrances onto Port Republic Road, the identical sign restrictions, and they again removed subsections (6), (7), and (8), all of which were the same as the existing proffers. New proffers included: street trees, landscaping specifics, details about reconfiguring the entrance to Sully Drive and the subject property, and finally to allow an increase of 36,320 square

feet of commercial space for a maximum of 58,330 gross square feet. Staff recommended denial of the proffer modification citing concerns that if the proffers were amended to increase the amount of commercial space, this section of the Port Republic Road corridor would essentially be converted into a major commercial district, something this area of the city was never planned for nor could it handle. The Traffic Impact Analysis (TIA) that was performed by the applicant's engineer noted that the traffic situation was already unacceptable; therefore staff was reluctant to endorse an application that most certainly would have created more troublesome traffic conditions on Port Republic Road.

The applicant's current request is to modify the existing proffers by proffering the following details:

- The 5.894 acre property is limited to commercial space, not to exceed 49,980 gross square feet. (This includes all patio, deck, and terrace areas)
- The proposed new entrance to Sully Drive will meet City standards and the recommendations of the City Engineering Department during Comprehensive Site Plan Review.
- No additional entrances will be constructed onto Port Republic Road. The two existing entrances will be relocated and/or adjusted approximately as shown on the rezoning plan subject to recommendations of the City Engineering Department during Comprehensive Site Plan Review.
- Twenty-one (21) deciduous trees, no less than 2" in caliper at planting, will be planted at approximately 40' intervals and maintained along the length of the property boundary adjacent to Port Republic Road up to the southernmost entrance. Additional trees, of this same size, will be planted with the same spacing and maintained at the base of retaining walls greater than 6' high.
- Port Republic Road widening, as generally shown on attached rezoning plan. This includes:
  - The design of the road widening across TM# 92-A-1 in coordination with the City of Harrisonburg.
  - All right-of-way and easements needed for the road widening across TM# 92-A-1 will be dedicated.
  - All costs for the road widening across TM# 92-A-1 will be provided.
- Sign restrictions:
  - The total square footage of all free standing signs will be a maximum of 150 square feet.
  - The sign height is limited to 25 feet.
  - The current lot and any future lots created will not be allowed to have an interstate overlay sign.
- Only the following by-right uses shall be permitted:
  - 10-3-90 (1), (2), (3), (4), (5), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (18)
- Applications for all special use permits shall be permitted.

The proffers associated with the new entrance configuration of Sully Drive and the entrance to the subject property, the street trees and other landscaping specifics, the sign restrictions, and the allowable uses are not new ideas. Although the proffer that restricts the allowable uses is now written in the affirmative rather than the negative, the end result is more or less the same, and it actually is more protective for the City, meaning that any new uses adopted into the B-2 category would not be permitted on this property. All in all, these details were previously submitted and reviewed by Planning Commission in October; staff was and remains supportive of these submitted

proffers. There are, however, three new/modified proffers. First, the applicant has once again changed the amount of square footage that would be permitted to be built. The proffer modifications would allow a maximum of 49,980 square feet, which is 8,350 square feet less than what was presented in October, but still 27,980 square feet more than what is currently allowed. Secondly, they have proffered to close the northwestern most entrance along Port Republic Road and to relocate it further west on the property, aligning it with Bradley Drive across the street. They would also decrease the width of the remaining entrance near the intersection. The final difference in the proffers is they have now specified that they would dedicate all of the necessary right-of-way to design and construct, at their cost, widening of Port Republic Road along their entire road frontage. This length is essentially the downhill northwestward slope of Port Republic Road.

The intended layout has not dramatically changed from the October meeting. The main difference is that they have removed what they were originally calling a third phase, which was a separate structure further west on the property. This area now encompasses parking and the new ingress/egress that aligns with Bradley Drive. The applicants continue to plan for an addition on the eastern side of the existing building, which would consist of 3,065 square feet, and then a second addition would add 33,105 square feet located on the western side of the existing building. Furthermore, they intend to construct an approximate 1,800 square foot patio area that could eventually accommodate outdoor dining. This area must be counted as commercial space because it has to be accounted for in their parking calculation. The layout is also illustrating an example of what the new entrances to this property and to Sully Drive could look like. If approved, this detail will be worked out in coordination with the Engineering Division during the site plan review. The proffered Port Republic Road street improvements will also be worked out with the Engineering Division at the same time.

Staff continues to appreciate the applicant's willingness to proffer the street trees and additional landscaping. As discussed during previous reviews, the parcel is located within a Corridor Enhancement Area as designated by the Comprehensive Plan and very close to a primary gateway into the City; staff believes the additional landscaping will help beautify this corridor and the aesthetics of the site.

As a reminder, the applicant's engineer has already performed a TIA, which declared there would be little impact generated by the expansion as it is proposed but further clarified that it was difficult to determine quantitatively what the impact would be because the level of service was already at an "F" level with or without the development. Ultimately, it was concluded that the level of deterioration did not warrant any improvements that could restore the level of service to pre-development levels. These results did not appease staff's worries about traffic generation, and in fact, heightened staff's constant concern about the congestion on Port Republic Road. During the recent review and discussion with the applicant's engineer, staff discovered that the TIA did not take into account the traffic that would be generated by James Madison University's (JMU) athletic facilities that are planned for the large acreage at the Port Republic Road/Neff Avenue intersection. These facilities will generate even more traffic on Port Republic Road and also onto Devon Lane because there is a planned entrance to the facilities from this street.

The scale of this proposed development continues to give staff great concern because we believe if this is approved; it would convert this section of Port Republic Road into a major commercial district. The scale is also bothersome due to the increased traffic that would occur on Port Republic Road. Staff appreciates the applicant and their engineer's efforts to widen Port Republic Road, but

as noted by the TIA, there were no suggested improvements that could alleviate the traffic issues to pre-development levels, which are already unacceptable; therefore, staff is unconvinced the proposed widening is sufficient to offset the undesirable impacts that could be generated from the additional commercial square footage. Staff continues to believe that approving this request would ignore the Comprehensive Plan and disregard the greater public interest and again recommends denial of the rezoning.

Chairman Baugh asked if there were any questions for staff.

Mr. Burden said the 49,000 square feet is rather large, and then asked if that included the patio area.

Mr. Fletcher said yes, it includes the patio area and terrace; this has to be included as part of the parking calculations.

Mr. Burden said square footage figures that are usually used in other areas are generally under roof totals.

Mr. Fletcher said the comparisons that were discussed in the previous hearing were under roof totals only.

Mrs. Turner said this additional outside square footage has not been proffered; in other words the entire 49,000 square feet could be under roof.

Mr. Pace said we know that Port Republic Road is an “F” as far as traffic. We know that this facility will bring additional traffic through this situation that is already bad. If this additional lane is built, does that improve the flow of traffic overall to help out Port Republic Road or because of the multiple stoplights at the bottom of the hill do you just bottleneck again.

Mr. Fletcher replied he could not directly answer that question. He could offer that the TIA report for this site could offer no suggested improvements. It did not even suggest improvements of widening the road. Public Works did not comment whether this would really help the situation, we just looked at it as if it was not sufficient to alleviate any traffic concerns we have.

Mrs. Turner said the applicant’s engineer may be able to address this question more fully; especially with the idea that this scenario only does improvements along their frontage of Port Republic Road. But if we had something else where there would be frontage improvements along another frontage of Port Republic Road, at some point we would get to a sum total where it would be an improvement.

Mr. Pace said it is the fact that when you get to the bottom of the hill you get to four stop lights; it is a big wide road that funnels to a bottleneck situation. My feeling is this looks good but it is not going to help because of the stop lights.

Mr. Wiens said I think you can say there is no way we are going to build our way out of this traffic problem. This is just an attempt to build our way out; but you cannot do it. If anything, especially after the athletic fields go in, it is going to get much worse. This is not going to get better. There is nothing that we can do to make this situation any better, except perhaps something that has absolutely nothing to do with this property.

I would like to step back from the traffic issue here, I feel it is a non-starter and I believe it keeps us from thinking creatively. Are we against this whole concept conceptually or is it just a traffic issue?

Mr. Fletcher replied I think it is a combination of the two. We have jumped above the square footage that has already been approved.

Mr. Wiens said I understand that; but are we saying that we do not want business in this area? Or is it the traffic issue? If we could work around the traffic issue would you not have any problems with this request?

Mr. Fletcher said your question really speaks to what are we going to do with this corridor during the next Comprehensive Plan review. I do not think we are saying that we do not want businesses here, but size and scale is very important.

Mr. Jones said I see pro's and con's on a fifth lane if it is going to be a center left turn lane. Traffic traveling west, coming down the hill, will not be stopping the flow of traffic in order to facilitate the left turn into housing as it does now. However, traveling easterly, or uphill, we have all seen so many times where traffic is backed up from Forest Hill Road to Devon Lane; therefore it is just another lane to fill up and I do not see a benefit with that. That is a major hurdle for me – the traffic problem in this area. It is a tremendous problem, and I am taking the position that until something is done with the stop lights I cannot in good consencious support anything that will increase the traffic on Port Republic Road.

Chairman Baugh asked if there were any further questions for staff. Hearing none, he said I have a request that we take a brief break. The meeting was recessed at 8:32 p.m. Chairman Baugh called the meeting back to order at 8:40 p.m., he then opened the public hearing and asked the applicant or applicant's representative to speak.

Mr. Ed Blackwell with Blackwell Engineering said he is representing the owner/applicant. We have discussed this site a lot over the last year. I want to bring up several items that came up tonight during the staff report. One of the biggest issues is traffic, and therefore we are proposing with our outdoor seating to proffer that somewhere between 8,000 to 9,000 square feet will be for outdoor seating and under roof square footage will be around 40,000 to 41,000, I will get these exact numbers to staff. Therefore, we are dropping our under roof square footage to approximately 41,000 square feet. Ultimately, this will help drop the traffic some.

Now we get to the traffic which is the discussion we have heard tonight. We are proposing a fifth lane across our frontage. We did present to staff what some of our recommendations were and we feel like this fifth lane will help the area. The stop lights and the entrance to JMU are the back-ups on this road. When the kids are going to class in the morning and traffic is backed up, you are right, this is nothing more than another lane for them to back-up in. But the entire day is not like that and the fifth lane will help this section. There is a wreck at the intersection of Bradley Drive at least once every two weeks; someone traveling west, trying to turn left on Bradley Drive gets rear-ended and having the center lane will help in situations like that. Whether it is a median or a fifth lane it will help the City.

For those of you who were here in the 1970's and early 1980's when the mall and the East Market corridor from I-81 to the City limits were built, there were two lanes traveling in each direction. At that time VDOT required anyone who developed in that corridor had to build a full lane across their frontage, even if the frontage did not go anywhere. Over the years that whole corridor has become three lanes each way; was this all done at once, no, but it is done. That corridor now has more than 29,000 vehicle trips per day. With this situation we are willing to build a piece of a fix in this area. Is this the whole fix needed, no; but it is a start, it is a step in the right direction. We figure this is a \$300,000 -- \$500,000 fix we are proffering; with the land and the road widening with improvements. This will be an asset for this corridor, somewhat now and definitely in the future when other fixes are put in place.



We are also willing to proffer that all the additional square footage that we are asking for tonight, over and above what is already approved, none of the businesses located in that addition will open before eleven in the morning. Therefore, with this amended proffer request we will not be affecting any morning traffic that backs up along this corridor. The convenience store opens at seven and they have very little morning business.

We will do all we can with this property to help with the traffic situation and we think these proffers are a step in the right direction. As for the new JMU ball fields, we learned of those when staff mentioned it to us several weeks ago. There again, we believe the fifth lane of traffic will help with access to the ball fields because of the large stacking lane it will provide.

Chairman Baugh asked if there were any questions for Mr. Blackwell.

Mr. Fletcher asked for clarification on the new proffers.

Mr. Blackwell said all the outdoor areas, the patio and terrace, approximately 9,000 square feet of area we proffer as outdoor area, not under roof. All new square footage, with this request, will open at 11:00 a.m.

Mr. Fletcher said is the convenience store the only thing that will open before 11:00 a.m.; what about Dairy Queen and Great Wraps Café.

Mr. Blackwell said they currently open at 11:00 a.m. What we are proffering is all this new square footage with this request, the 20,000 plus the terrace area, will open at 11:00 a.m. Any square footage that we already have approval for does not fall under this proffer.

Mr. Pace said if this is approved would the expansion of Port Republic Road be completed by 2010.

Mr. Blackwell replied that the schedule for construction of phase two is what we will tie the widening of Port Republic Road to.

Mr. Pace said it would not be completed by 2010.

Mr. Blackwell said no, we would tie it in with phase two.

Mr. Fletcher said we would probably interpret it with phase two, because you already have approval for phase one.

Mr. Finks asked if they had any idea what the daily vehicle count on Port Republic Road is.

Mr. Blackwell replied I do not have those figures with me. But there is actually more on Route 33 than there is here.

Mr. Snell said last time you were here I asked the question about the two entrances that are near the corner; your site plan still has them on there. Did you work something out with staff regarding these?

Mr. Blackwell said we met with staff regarding several different scenarios, but the one thing we have to remember is there is a fuel truck that has to come in and out of the site. We need that entrance on Devon Lane, closest to the intersection to get the fuel truck in. We are open to restricting the entrance on Port Republic Road to right-in/right-out only; or if the City desires they could put a median in Port Republic Road. We are reducing the size of one of the entrances.

Mr. Snell said you mentioned earlier that staff was not necessarily in favor of a median strip in this area.

Mr. Blackwell replied that is not necessarily the case, we are proffering to widen the road; the City can then leave it as five lanes or put in a median. We will do our piece, but that does not mean the City would not come in at a later date and install a median.

Mr. Fletcher said there were several different issues that were discussed with staff. There was a median strip that was presented, but it caused problems on the opposite side of the street with entrances. You would have to make U-turns to either enter or exit this one property.

Mr. Snell replied he understands if the median is not an option; but he still has concerns regarding the two open entrances into the site along Port Republic Road. What happens when someone elects to turn across traffic on Port Republic Road, into one of two entrances, tying up traffic, rather than going to the stop light and turning in with the signal. Another scenario that causes a real traffic problem is on Devon Lane and traffic stacking out into the intersection because someone is attempting to turn left into the convenience store, rather than travel down to the next entrance.

Mr. Blackwell said when we did the traffic study the queuing there was not that bad. You have the right turn on red motion that clears out a lane.

Mr. Snell said we currently have a standard that you cannot put an entrance closer than 50 feet from the curb return of the intersection. That is not much room; but this entrance looks to be only 32 feet.

Mr. Blackwell replied that in our earlier traffic model we did not see the traffic problem here. It is on Port Republic Road. It does not back up on Devon Lane the way it does on Port Republic Road.

Mr. Snell said to me that entrance is a convenience for a truck driver.

Mr. Fletcher asked if the truck driver enters from Port Republic Road or Devon Lane.

Mr. Blackwell said right now it is Port Republic Road; but we are discussing this median which means the truck would turn in on Devon Lane and would need the wide entrance to get in.

Mr. Snell said why do we not want a median.

Mr. Fletcher said the idea just rather died off. The property owner across the street who would lose the access has no idea that any discussion regarding a median strip was happening. We would definitely want them to be aware and involved in any discussions on this.

Mrs. Turner said I believe Public Works bigger issue was that they did not foresee in the future being able to take a median from Hunters Road to Forest Hills Drive, without reworking both sides of the street; which would be significant funding. So they did not think that it would be occurring anytime in the near future and I do not believe they liked the idea of having a median just in front of this property, without continuing it further. They said if this request is going to move forward they would prefer to get the additional right-of-way, have it be a lane perhaps now, and then later if they develop a plan and the funding is there they may put a median in along the entire corridor with the right-of-way already in place.

Mr. Snell said last month we discussed the types of businesses and the difference between destination retail and “on-campus” retail. Has there been any lead on what types of businesses are going in for this complex?

Mr. Blackwell said we know one of the tenants that were looking at the second floor and terrace area was a student oriented restaurant type facility.

Mr. Sanjeev Bhuta, the property owner, said it is hard to say right now because we are not getting any great response due to the economy.

Mr. Snell questioned if they had any leases yet.

Mr. Bhuta said no, people want to see a more concrete plan.

Chairman Baugh asked if there were any further questions for the applicant. Hearing none, he asked if there was anyone wishing to speak in favor of the rezoning request. Hearing none, he asked if there was anyone wishing to speak in opposition of the rezoning request. Hearing none, he closed the public hearing and asked for comments and discussion from Planning Commission.

Mr. Snell said I would like to revisit the earlier question to staff asking if our issue was whether we wanted businesses at this location or if it was with the traffic.

Mr. Fletcher replied again it is a combination of both. Our Comprehensive Plan has never visualized this section as being a large scale commercial district as what we are seeing; this is a large building being proposed. Traffic is definitely a big issue, we are reluctant to recommend for anything here that is going to increase traffic; all we hear about is how horrible Port Republic Road is. It is really a combination of both, the scale and the traffic.

Mr. Snell said do you think that the applicant's comment that there might be a reduction in traffic has any viability.

Mr. Fletcher said I personally find that hard to believe.

Mrs. Turner said I think it is the scale of this project. Obviously, we are not really opposed to commercial development here because when they came in to amend their R-4 plan of development to put 10,000 square feet more of commercial development in, we recommended for approval. It is just with this latest addition, we have a concern that the scale is getting beyond what we think is the neighborhood commercial type uses and into more of a destination type use. We have an area for exactly that at the intersection of Port Republic Road and Peach Grove Avenue, which is not even totally utilized yet.

Mr. Wiens said my concern is that this is a very heavy student traffic area and if we are not against the concept of commercial here, then this is where people want commercial. Perhaps this is a question for the next Comprehensive Plan; but it seems to be a demand for commercial in this area and I think we have the potential to tap into a big business potential here, I just do not know how to do it.

Mr. Snell said there is definitely a demand and the reason I say that is because I travel Port Republic Road quite often now. I am quite appalled at what goes on Friday and Saturday nights at the intersection of Port Republic Road and Devon Lane. You will see hundreds of students just "hanging out" at this area.

Mr. Wiens said we are talking about ways to get them downtown, but obviously the business is there.

Mr. Snell said they are getting downtown, but they are also at this big block party, regularly. I think that the additional fifth lane is a step in the right direction; it creates a turn lane for west bound traffic but it does nothing for east bound traffic. This corridor has a rush hour; at 8:00 a.m. going westbound, at 5:00 p.m. going eastbound, and almost always on the bridge over Interstate 81.

Mr. Jones said I think a center left turn lane would be beneficial at certain times during the day at least on that side of the Interstate. I would rather see a center turn lane than a median.

Mr. Snell said we can throw a rock from this parcel to the rezoning we just approved. I have never argued precedent and I do not believe in precedent; but it is just across Port Republic Road from this.

Mrs. Turner said we did recommend approval of and it was approved by Planning Commission and Council for a 10,000 square foot addition here. It is not that this property is not being used now or questioning what is its use; it is being used now and the question is how intensely would it be used. We did not see the earlier rezoning as a precedent; it is a use comparable to what has already been approved for this parcel with the 10,000 square foot addition. This request puts it in another class.

Mr. Wiens asked is your issue with the intensity of the land use or the traffic.

Mrs. Turner replied I think it is both. I do not think staff had envisioned Port Republic Road being a commercial corridor in this area. When you go putting in uses that are potentially 50,000 square feet commercial space it is approaching a rather intense commercial use of property.

Chairman Baugh said it was not too long ago that all of this including this property was zoned planned residential. Really what has driven the rezoning on this was the fact that the owners had maxed out the amount of commercial they could put on the R-4.

Mr. Fletcher said it was two things; they wanted a drive-thru and no commercial uses could be greater than 2,000 square feet. But they had not maxed out the square footage yet.

Chairman Baugh said my point is that what was envisioned here not that long ago as far as potential commercial was some additional commercial on this property. In the meantime what has happened we have approved some additional commercial for this property, we approved commercial uses at 865 East, and we recommended favorably on one earlier this evening. So now in addition to those increments that have been viewed favorably we now have some quantum step upward, a big increase and we are at a point where the line is getting crossed.

Mr. Pace said I have concerns with the nature of the development here. To extend the development is focused on providing food and services to college students, so it is not necessarily a place I would go. That moves me more in favor of this request, because we have also said this area is going to be intense high density student housing into the future. Ten years out, when people are building this intense high density, are we not better off having something scale wise that is there for those students to access and not have to travel elsewhere. Also, the center turn lane would provide added access for those students wanting to access the ball fields. Those are my two points.

Mr. Wiens said I am not sure I am comfortable with the traffic situation as it is now to vote in favor of this; but at the same time I would like to see them come back with something creative that is not one big building. I would like to see a whole series of small buildings/shops of different kinds that would cater to JMU students Saturday night crowd. Perhaps I am being greedy, but it seems like there is a whole lot of money being left on the table that we should be able to do something with, while providing entertainment and someplace for the students to go. Having said that, I do not think I could vote favorably for this at this time; but I would like to see some type of development there that I could vote for.

Mr. Burden said the developers of 865 East believed that the demand for the retail in the bottom of their building is potentially going to be completely utilized by the persons living in the building. So

to some extent that additional impact on the road and traffic cancels itself out. With this there is no one living there and it is very large, it is different, it is not mixed use. Whatever goes here is going to be student oriented; they are not missing out on anything by opening at 11:00 a.m.

Chairman Baugh said for me, I am not at all convinced that ultimately something like this is the wrong use of this space. Some sort of long term planning process is really what we need to come up with, not just be driven by which ever applicant comes in with whatever proposal answers a lot of our questions. I am not ready to go there at this time. If we believe our planning is right this area and the area across the street is the area where high density student development is going to go. Even with 865 East, when that development came up, we had pause because of the traffic issue. At the end of the day, we all voted for that, but it was after lengthy discussions on how bad the traffic situation was out there. I am just thinking this all needs to be part of a larger process of trying to make sure these things come together. If we deal with these things in a patchwork fashion, we are going to get some sort of patchwork out there that may not work very well.

Mr. Finks said I make the motion to deny this request.

Mr. Jones seconded the motion.

Chairman Baugh asked if there was any further discussion on the matter. Hearing none, he asked for a roll call vote on the motion.

Commissioner Finks – yes.

Commissioner Wiens – yes.

Commissioner Burden – yes.

Vice Mayor Pace – no.

Commissioner Snell – yes.

Commissioner Jones – yes.

Chairman Baugh – yes.

Chairman Baugh said the rezoning request moves forward to City Council on January 13, 2009 with an unfavorable recommendation (6-1).

### ***Capital Improvement Program***

Chairman Baugh said before you are the additional insert pages for the CIP. Historically, where we are now is we are debating, in light of these new pages, whether we are prepared to forward the CIP on to City Council.

Mr. Pace said we had a chance to express our questions at last month's meeting and essentially the new pages that are in there discuss the parking decks and other items we discussed putting in there. There are not any surprises in these pages and I recommend that we submit the document to City Council for their consideration and approval.

Mr. Jones seconded the motion.

Chairman Baugh asked if there was any further discussion. Hearing none, he called for a voice vote. All voted in favor of the motion to recommend approval of the CIP (7-0).

Chairman Baugh said this will move forward to City Council on January 13, 2009.

**Unfinished Business**

None.

**Public Input**

None.

**Report of secretary and committees**

Mr. Fletcher said we have finished a second cycle of our proactive zoning. We are almost at a 50-50 split; 55% of the City saw a reduction in violations, while 45% saw an increase in violations. We will be starting another three year cycle next year.

Mr. Pace asked what is the issue with the Waterman Elementary area.

Mr. Fletcher said there was a lot of junk and debris; it could be a change in demographics or more rental properties.

Mr. Pace said as you heard earlier this evening, City Council did vote in favor of the rezoning request at 1320 Port Republic Road for the scooter store.

**Other Matters**

Chairman Baugh said we do have the Mixed Use Zoning District final draft before you for review.

Mr. Fletcher said as the memo states there are two changes with this draft. The text which discusses how uses that are generally regulated under Article T was relocated and we inserted language about bus shelter requirements.

Mr. Pace moved to proceed to a public hearing for the Mix Use Zoning at the next regular Planning Commission.

Mr. Finks seconded.

Chairman Baugh asked for a voice vote on the matter.

All voted in favor (7-0).

Mr. Fletcher said he had just a couple of items. Next month there will be no site tour because there are no sites to tour. We also have several other ordinance amendments within the R-6 and R-7 classifications; therefore our January meeting will be nothing but ordinance amendments.

Chairman Baugh said there are some of us here that tonight will be our last meeting as part of Planning Commission. He then recognized Mr. Wiens for comments.

Mr. Wiens said he wished to thank staff and the other members of Planning Commission. He said he has really enjoyed working with everyone and has enjoyed the experience.

Chairman Baugh said I have enjoyed working with each of you staff, colleagues, and fellow commissioners. You should all know individually, I have the upmost respect for each of you. I appreciate all the support given to me as chair; it has been a pleasure to work with all of you.

Mr. Pace thanked everyone and said what he has learned in the last four plus years of government is there really is not any quick solution to any of these things. This commission took on the task of reforming our zoning districts; we took on R-3, R-5, R-6, R-7 and now MX-U. The work that has gone into this is huge and I am glad I was part of it.

Mr. Fletcher said I have three things to remind each of you – your financial disclosures need to be in by January 15, 2009; Mr. Wiens needs to provide a resignation letter from the BZA; and in January we will elect officers.

**Adjournment**

The meeting was adjourned at 9:55 p.m.

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Chairman Richard Baugh

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Secretary, Alison Banks